

Virginia Housing Commission: Common Interest Communities Work Group

9/12/2006 - Comments submitted by Chris Casey - info@freemontclair.us

The Facts

According to the Community Associations Institute, *more than 500,000 Virginians live under Property Owner's Associations in the Commonwealth of Virginia, and five out of six new communities developed are association managed.*

According to 2000 Census Figures, the population of my community of Montclair was 15,728. If Montclair was included in a list of Virginia counties and towns ranked by population, it would rank 90th. Montclair's population in 2000 was larger than 30 Virginia Counties and larger than the cities of Martinsville, Williamsburg and Falls Church.

Individuals who purchase in association governed communities understand that they must accept living under the community guidelines.

- If I need to paint my house, they may limit my color choices
- If I need to put on a new roof, they may specify an approved shingle type
- And if I need to put out a sign, such as a 'For Sale' sign, or a 'Welcome Home' sign, they allow it with specific restrictions.

ONLY political campaign signs are singled out for an absolute prohibition. WHY?

The Law

The Supreme Court has stated that political signs are protected speech

CITY OF LADUE et al. v. GILLES - 1994

Justice Stevens wrote:

A special respect for individual liberty in the home has long been part of this Nation's culture and law and has a special resonance when the government seeks to constrain a person's ability to speak there. The decision reached here does not leave Ladue powerless to address the ills that may be associated with residential signs. In addition, residents' self interest in maintaining their own property values and preventing "visual clutter" in their yards and neighborhoods diminishes the danger of an "unlimited" proliferation of signs.

The Constitution of Virginia

Section 12. Freedom of speech and of the press; right peaceably to assemble, and to petition.__

That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.

Section 14. Government should be uniform.__

That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

Virginia Law

§ 15.2-109. Regulations on political campaign signs.

No locality shall have the authority to prohibit the display of political campaign signs on private property if the signs are in compliance with zoning and right-of-way restrictions applicable to temporary nonpolitical signs, if the signs have been posted with the permission of the owner. The provisions of this section shall supersede the provisions of any local ordinance or regulation in conflict with this section. This section shall have no effect upon the regulations of the Virginia Department of Transportation.

Where federal and state law are both absolutely specific and clear in their efforts to protect this right, what compelling reason do POAs have to justify their need to strip it completely?

It IS the Public Policy of the Commonwealth to protect the free speech rights of the citizens of the Commonwealth. The General Assembly of Virginia has a legitimate public purpose in seeking to return to citizens of Virginia, any free speech rights denied to them as a condition of buying a home.

The Need

This legislation provides a reasonable solution between two extreme positions

One extreme would be for complete freedom to display political signs of any size, number and duration on their private property. I do not advocate for this position in the context of a POA governed community.

The other extreme is for the complete and total prohibition of political signs on private property. This is the current rule in my POA.

A reasonable middle ground does exist, that protects the free speech rights of individuals, and recognizes the desire of POA's to protect the appearance of their communities. That middle ground is to allow for the display of political signs on private property, with reasonable limits imposed on the number, size, and duration that they can be displayed.

It is because of the overreaching guidelines of Property Owners Associations that PROHIBIT homeowners from exercising the right to display a sign, that many states have passed laws to specifically protect it. **In the last three years, at least six states have passed laws similar to SB 621 (AZ, CA, CO, NC, TX, WA)**

Washington State on Constitutionality of Retroactive Legislation

Both the state and federal Constitutions provide that no state can pass a law impairing the obligation of contracts. A contract is impaired if the statute alters its terms, imposes new conditions, or lessens its value. Even if a contract is substantially impaired, it may not be unconstitutional if it was reasonable and necessary to achieve a legitimate public purpose. A court will compare the level of impairment with the public purpose advanced by the law.
Washington State Senate Bill Report – SB6064

In February of 2006, **The Appellate Division of the Superior Court of New Jersey** found that the rights guaranteed by the state's Constitution do extend into private communities. The Judicial Panel's Unanimous opinion in the case of *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association* stated:

"Any person is free to accept Twin Rivers's invitation to purchase or rent property in that community; that choice cannot be at the expense of relinquishing what the New Jersey Constitution confers. Moreover, even where there has been no invitation to the public, our jurisprudence clearly allows access to private property to exercise constitutionally guaranteed rights. Twin Rivers is in New Jersey. The rights guarantees of our State Constitution apply in that community as in every other in the State."

"The manner and extent to which functions undertaken by community associations have supplanted the role that only towns or villages once played in our polity mirrors the manner and extent to which regional shopping centers have become the functional equivalents of downtown business districts."

"...even if Twin Rivers is viewed solely as private property, the TRHA (Twin Rivers Homeowner's Association) can be required to allow free speech and other expressive exercises, as broadly guaranteed in the New Jersey Constitution even as to non-governmental actors, when the public interest weighs more heavily in the balance than the private property rights involved."

This Legislation

There is a very important distinction between these two bills. HB878, which was actively opposed by the Community Associations Institute (CAI), would invalidate any existing prohibitions against the display of a political sign by a POA. While SB621, which was not opposed by CAI, essentially states that you cannot prohibit political signs, unless you prohibit political signs.'

The argument against HB878 is that it would be an unconstitutional retroactive change to an existing contract. But as pointed out above, other states have had to deal with this similar dilemma, and found that the violation of the free speech rights of their citizens outweighed concerns for any harm that such a change would cause to a contract.

HB878

Provides that, **notwithstanding any provision in a declaration**, no declaration or association's rules and regulations or architectural guidelines shall restrict or prohibit the display by a lot owner on his lot of a candidate sign or a sign that advertises the support or defeat of any question submitted to the voters in accordance with state election law.

SB621

Provides that, **except as otherwise expressed in the declaration**, no declaration or association's rules and regulations or architectural guidelines shall restrict or prohibit the display by a lot owner on his lot of a candidate sign or a sign that advertises the support or defeat of any question submitted to the voters in accordance with state election law.

Debunking Some Myths About Political Signs

Premise: Signs of ANY type have a negative impact on the aesthetics of our community.

Fact: Certain types of signs, such as a 'For Sale' or 'For Rent', or a 'Yard Sale' or 'Happy Birthday' are permitted under particular circumstances.

Fact: Only political signs are specifically prohibited under ANY circumstance.

Premise: Political yard signs have a negative impact on property values.

Fact: As a homeowner myself, I shared our common desire for high property values, but that's all it is, a desire, not a right. And what evidence is there that political signs have ANY impact on property values? Or any greater impact than other types of signs? Does a neighbor's American Flag or yellow ribbon around their tree have a negative impact on property values? I believe the contrary is true. I believe that like these symbols, the display of political campaign signs reflect positively on a community in which they are displayed. Such a community is an active, involved, and civic-minded one.

Voting... deepens community involvement. Studies indicate that voters are more active in community affairs than non-voters are. And recent evidence suggests that the act of voting itself encourages volunteering and other forms of good citizenship.

The Vanishing Voter by Thomas Patterson

What if a majority of Montclarions support the continuation of the prohibition?

The might of a majority does not always make them right. Our history is full of examples unjust laws and efforts by a majority to deny rights of a minority. Jim Crow laws intended to suppress voting by minorities, or restrictive covenants that prohibited members of a particular race, religion, or nationality from living in a community are examples are just a few examples of majorities attacking the rights of a minority. The desire of a majority of Montclarions for a sign-free aesthetic ideal, should not outweigh the free speech rights and participation in our political process by a minority.

Relevant Quotes

Thomas Jefferson (2nd Gov, 3rd President)

I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it.

Letter to Archibald Stuart (1791)

James Madison (4th President, Father of the Constitution)

"There are more instances of the abridgement of the freedom of the people by the gradual and silent encroachment of those in power, than by violent and sudden usurpation."

George Washington

For if Men are to be precluded from offering their Sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind, reason is of no use to us; the freedom of Speech may be taken away, and, dumb and silent we may be led, like sheep, to the Slaughter.

Address to the officers of the army

Newburgh, New York – March 15, 1783

George Mason (Virginia Declaration of Rights)

Article 14

That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.